

## Chapter 7: GLOSSARY

- 7.1 Box** – A box is the place on the Master and Drug Grids where the criminal history score of the offender and the group of the offense of conviction intersect. There are 45 boxes on the Master Grid and 15 boxes on the Drug Grid, which indicate the sentencing options for each combination of offense and criminal history. Boxes are identified by using the number of the offense of conviction group (1-9) and the letter of the criminal history column (A-E). Thus, Box 9A is in the lower left hand corner of the Master Grid and contains the lowest possible sentencing options. Box 1E is in the upper right hand corner of the Master Grid and contains the highest possible sentencing options.
- 7.2 Completion of the Sentence** – A criminal sentence is completed when a person is sentenced, is released from jail or prison, or finishes probation, parole, or supervised release, whichever is latest. A juvenile adjudication is completed when the disposition is entered or when the person is released from Oak Hill or its functional equivalent, *see* § 7.19, or, in Groups 1-5, from a locked residential facility or the locked section of a residential facility, whichever is latest.
- 7.3 Compliant Sentence** – A sentence is compliant if it is one of the options permitted in the appropriate box. For example, in Box 9A, which is light gray, probation, a short split sentence, or a prison sentence between 1 and 12 months would all be compliant. In Box 1E, which is white, the only compliant sentence would be a prison sentence of not less than the mandatory minimum of 360 months (30 years) nor more than the statutory maximum of 720 months (60 years). A sentence also is compliant if it is within the prison range that is expanded by a statutory enhancement. A sentence also is compliant if it is imposed under Rule 11(e)(1)(C). A sentence also is compliant if the judge departs from the options in the box by applying one of the enumerated aggravating or mitigating factors, including applying the catchall of another substantial and compelling basis comparable in gravity to the other enumerated mitigating and aggravating factors. A judge is not required to explain why s/he imposed a compliant sentence. If the judge departs (applies an aggravating or mitigating factor), however, the judge must indicate which factor(s) was found and if the catchall aggravating or mitigating factor is used, the judge must further indicate what the substantial and compelling basis of comparable gravity was. To summarize, the following sentences are compliant:
- (a) a sentence in the appropriate box (including the mandatory minimum, if applicable);
  - (b) a sentence in the appropriate box as expanded by a statutory enhancement;
  - (c) a sentence outside of the box where there is a substantial and compelling reason contained in one of the enumerated aggravating or mitigating factors or one of like gravity; and
  - (d) a sentence or sentencing range agreed to and accepted under Rule 11(e)(1)(c).
- 7.4 Crime of Violence** – The term "crime of violence" means the following offenses whether armed or unarmed:
- Aggravated assault;
  - An act of terrorism;
  - Arson;
  - Assault on a police officer;
  - Assault with a dangerous weapon;
  - Assault with intent to commit any felony;

Assault with intent to kill;  
 Burglary;  
 Carjacking;  
 Child sexual abuse;  
 Cruelty to children in the first degree;  
 Extortion or blackmail accompanied by threats of violence;  
 Kidnapping;  
 Mayhem;  
 Malicious disfigurement;  
 Manufacture or possession of a weapon of mass destruction;  
 Murder;  
 Negligent homicide;  
 Possession of a firearm during the commission of a crime of violence only  
 Riot;  
 Robbery;  
 Sexual abuse in the first, second, and third degrees;  
 Use, dissemination, or detonation of a weapon of mass destruction;  
 Voluntary manslaughter; or  
 An attempt or conspiracy to commit any of the foregoing offenses as defined by any Act of Congress or any State law, if the offense is punishable by imprisonment for more than one year.

**7.5 Criminal History Score** – The criminal history score is the total number of points a defendant accumulates for his/her prior convictions and prior adjudications, calculated according to the guideline’s rules for scoring. *See* § 2.2. The criminal history scores range from zero to six or more points and determine where to place the defendant in the five columns, lettered A through E, on the horizontal axis of the grid. The columns contain the following number of points:

A	0 to ½;
B	¾ to 1 ¾;
C	2 to 3 ¾;
D	4 to 5 ¾; and
E	6+ points.

**7.6 Dark Gray or Dark Shaded Boxes** – These are boxes on the Master Grid and the Drug Grid where a short split sentence is a permissible option. A prison sentence within the indicated range would also be compliant. Any other option, including probation, would not be compliant, absent a departure. There are four dark gray boxes on the Master Grid and three dark gray boxes on the Drug Grid. On the Commission’s website, <http://acs.dc.gov>, the dark gray boxes on the Master Grid and Drug Grid are green. (On a non-color printer, the green boxes will print dark gray but will be light enough that the numbers in the boxes will still be legible.)

**7.7 Departure Principle** – A departure principle is a substantial and compelling reason that permits a sentence outside of the appropriate box, or a “departure.” A departure can be based on one or more of the enumerated aggravating or mitigating factors, or another substantial and compelling reason of equal gravity. For example, a probation sentence or a short split in a prison-only box would be a departure if the judge based the sentence on one or more mitigating factors. A prison sentence longer than the higher number in the prison range for a particular box would be a departure if the judge based the longer sentence on one or more aggravating factors. A departure is a compliant sentence. To assist the Commission in data collection and analysis of the efficacy of the guidelines, the judge must indicate upon

which mitigating or aggravating factor s/he relied to depart. If the judge uses the catchall (Aggravating Factor #11; Mitigating Factor #10), then the judge must more specifically state what factor s/he found that was substantial and compelling and of equal gravity to the enumerated aggravating and mitigating factors.

- 7.8 Drug Grid** – The Drug Grid is a chart that contains the sentencing options for all drug offenses. There are 15 boxes on the Drug Grid, arranged in three rows on the vertical axis and five columns on the horizontal axis. The boxes range from Box 3A, the least serious offense and the lowest criminal history score, to 1E, the most serious offense and the highest criminal history score.
- 7.9 Enhancements or Statutory Enhancements** – An enhancement or statutory enhancement is a statutory mechanism for increasing the maximum sentence if certain factors -- such as recidivism, the vulnerability of the victim, etc. -- are present. The guidelines permit the upper number of the prison range in each box to be increased by the same proportion or ratio as the maximum sentence can be increased. *See Appendix H, Statutory Enhancements.*
- 7.10 Event** -- For purposes of determining which offenses count for criminal history scoring purposes, *see* § 2.2.5, and which offenses must be sentenced consecutively/concurrently, *see* Chapter 6, the phrase “a single event” means offenses that occur at the same time and place or have the same nucleus of facts. The phrase “multiple events” means offenses that occur at different times or places or have a different nucleus of facts.

#### Examples

- One event:** Defendant robs a convenience store. As he is leaving, but still inside the store, he engages in a gun battle with police officer who has the store under surveillance.
- Two events:** Defendant robs a convenience store at gunpoint. He speeds away from the scene and is stopped for a traffic violation. He shoots at the police officer.

- 7.11 Five-Year Window** – The five-year window is the five years preceding the commission of the instant offense. If, during this period of time, a person had a juvenile disposition, or was released from Oak Hill or its functional equivalent, or for a Master Group 1 - 5 offenses, was released from a locked residential facility or the locked section of a residential facility, that adjudication is counted toward the criminal history score (with a cap of 1½ points unless there are multiple offenses in Severity Groups 1-5).
- 7.12 Guidelines** – The guidelines are the combination of grids, standards, rules, adjustments and exceptions that provide guidance to the court in imposing a sentence that meets the objective of sentencing like defendants/offenses alike and different defendants/offenses differently.
- 7.13 In/out Decision** – The in/out decision is the decision to impose a sentence of incarceration (so that the offender will be IN prison) or to impose some form of probation (so that the offender will be OUT of prison) or a combination of the two (split sentence). The in/out decision is the first decision the court makes when determining what sentence to impose. Term length (either the length of the probation term, the lengths of the terms of the short split or the length of the prison sentence) is the second decision the court makes.

- 7.14 Instant Case** – The instant case is the case being sentenced.
- 7.15 Lapsed Conviction/Adjudication** – A lapsed conviction/adjudication is one that is not scored for criminal history because it is too old under the applicable rules. *See* § 2.2.3 for adult lapse period; § 2.2.4 for juvenile lapse period. *See also* § 2.2.3 for rules on reviving convictions.
- 7.16 Light Gray or Light Shaded Boxes** – These are the boxes on the Master Grid and the Drug Grid where probation, a short split sentence, and a prison sentence are all permissible and compliant options. There are five light gray boxes on the Master Grid and seven light gray boxes on the Drug Grid. On the Commission’s website, <http://acs.dc.gov>, the light gray boxes on the Master Grid and Drug Grid are yellow. (On a non-color printer, the yellow boxes will print light gray.)
- 7.17 Long Split Sentence** – A long split sentence is one where the court imposes a sentence within the applicable prison range, suspends execution of all but a term that also falls within the applicable prison range, and places the defendant on probation for a period up to five years. Because both the sentence imposed and the term to be served initially fall within the applicable prison range, this is a compliant sentence. As each box on the Master Grid and the Drug Grid has a prison range recommendation, a long split is a compliant sentence in any box. If either the number of months that the court imposes or the number of months to be served immediately does not fall within the applicable prison range for that box, such a sentence would not be compliant unless some other principle applies. *See, e.g.*; § 7.7, Departure Principles; § 7.9, Enhancement or Statutory Enhancement § 7.25, Short split Sentences;
- 7.18 Master Grid** – The Master Grid is a chart that contains the sentencing options for all offenses except drug offenses, which are on the Drug Grid. There are 45 boxes on the Master Grid, arranged in nine rows on the vertical axis and five columns on the horizontal axis. The boxes range from Box 9A, the least serious offense and the lowest criminal history score to 1E, the most serious offense and the highest criminal history score. Prison sentences increase and sentencing options decrease as one moves from the bottom to the top and from left to right on the chart.
- 7.19 Oak Hill or its Functional Equivalent** – Oak Hill is the current secure facility for juvenile offenders located in Laurel, Maryland. Its functional equivalent would be facilities such as the former Cedar Knoll or the former Receiving Home, the new detention facility on Mt. Olivet Road, and similar juvenile detention facilities in other jurisdictions such as Cheltenham or the Hickey School in Maryland, Beaumont in Virginia, or Spofford in New York.
- 7.20 Offense of Conviction** – The offense of conviction is that offense (charge) for which the defendant was convicted and is facing sentencing. The offense of conviction, not real offense conduct, controls a defendant’s placement in an Offense Severity Group. This means that if the indictment charged the defendant with Armed Robbery but the defendant was convicted of Robbery, either at trial or by way of guilty plea, the offense of conviction is Robbery in Group 6, not Armed Robbery in Group 5, even if strong evidence exists that the defendant actually committed the robbery while armed. While the offense of conviction controls where on the vertical axis (containing the Offense Severity Groups) this charge falls, the court may consider real offense conduct in accordance with Constitutional principles and general sentencing case law when deciding where within a box to sentence the defendant.

- 7.21 Offense Severity Group** – All felonies have been placed in a group with offenses of like seriousness as measured by the Commission’s understanding of typical offenses and historical sentencing data. These groups are arranged along the vertical axis from Group 1 (first degree murder) to Group 9 (receiving stolen property, etc.) on the Master Grid and from Group 1 (distribution of a controlled substance while armed) to Group 3 (attempt distribution) on the Drug Grid.
- 7.22 Prior Conviction, Prior Adjudication** – For purposes of computing criminal history score, a prior conviction or prior juvenile adjudication is any conviction or juvenile adjudication for which a sentence or disposition was imposed on a day prior to the day of sentencing in the instant case, regardless of the order in which the offenses were committed. Sentences or dispositions imposed on the same day as the sentence in the instant case are not prior convictions or adjudications for criminal history scoring purposes.
- 7.23 Real Offense Conduct** – Real offense conduct is what the defendant actually did. A defendant’s placement in an Offense Severity Group is based on the offense of conviction rather than real offense conduct. Real offense conduct can be taken into consideration in determining where within the appropriate box an offender should be sentenced, and in determining whether there is a departure principle that would take him/her out of the box.
- 7.24 Revived Conviction** – A revived conviction is a felony conviction for which the sentence was completed more than ten years before the commission of the instant offense that would not be counted toward the criminal history score but for the existence of a sentence for another felony in the ten-year window. Revived convictions for Master Groups 6-9 and Drug Groups 2-3 are scored differently than convictions within the ten-year window. *See* § 2.2.3. Juvenile adjudications and misdemeanors are never revived themselves and cannot revive earlier felonies or adjudications.
- 7.25 Short-Split Sentence** – A sentence where the court imposes a sentence within the applicable prison range, suspends execution of all but six months or less (but not all) of it, and places the defendant on probation up to five years. Absent a departure, it can be used only in the shaded boxes. If the judge suspends execution of all but some period longer than six months, this is a split sentence, but not a short split sentence. *See* § 7.17, Long Split Sentence.
- 7.26 Statutory Minimum** – A statutory minimum is a minimum sentence prescribed by statute which is not a mandatory minimum. A list of statutory minimum sentences is found in Appendix I.
- 7.27 Ten-Year Window** – The ten-year window is the ten years preceding the commission of the instant offense. If, during this period of time, a person was sentenced, released from jail or prison, or finished probation, parole, or supervised release, that conviction is said to be “within the 10-year window” and is counted toward the criminal history score. Prior felony convictions that are within the 10-year window can revive lapsed felony convictions.
- 7.28 Voluntary Guidelines** – The Guidelines are voluntary. This means that judges have discretion to impose any lawful sentence. There are no sanctions for failing to follow the guidelines, though the court is required to explain why it imposed a noncompliant sentence. Lawful sentences cannot be appealed regardless of whether they comply with the guidelines or not.

**7.29 White or Unshaded Boxes** – These are the boxes on the Master Grid and the Drug Grid where prison is the only permissible and compliant option, absent a mitigating factor. Altogether there are 35 white boxes on the Master Grid and 5 white boxes on the Drug Grid.

## **Chapter 8: FREQUENTLY ASKED QUESTIONS**

(reserved for future use)

## Chapter 9 : EXAMPLES

### 9.1 Example 1 -- Prison Only

Defendant was found guilty of Burglary II (Master Grid Group 7) for an offense committed on 2/9/2004.

*Prior convictions (or Criminal history)*

Assault With Intent to Kill (DC):	4/15/1997	Yes	3 points
PWID w/ armed (DC):	5/20/2002	Yes	2 points
PWID Cocaine (DC):	9/5/2003	Yes	<u>1 point</u>
			6 points

*Explanation of Scoring*

The assault with intent to kill conviction (Master Group 5) is 3 points. The PWID w/armed (Drug Group 1) is a 2 point offense and the PWID Cocaine is 1 point. All of them were sentenced less than 10 years before the commission of the instant offense. Thus, they all count. This offender's criminal history score is 6, which puts the defendant in column E.

*Sentence*

Defendant's current offense and criminal history put him in Box 7E. Box 7E is a prison-only box; in other words, the guidelines recommend that the in/out decision be "in" (prison). The guideline grid calls for a prison sentence of 36+ months. Thus, any sentence of 36 months or more would be a compliant sentence.<sup>16</sup>

A sentence of less than 36 months, a short split sentence, or a probation sentence would not be a compliant sentence unless the judge finds a departure principle. Without a departure principle, a sentence of less than 36 months is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

### 9.2 Example 2 -- Probation Permissible

Defendant pled guilty to Carrying a Pistol Without a License (Master Grid Group 8), for an offense committed on 2/9/2004.

*Prior convictions*

PWID Heroin (DC):	1/21/1996	Yes	1 point
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<sup>16</sup> In order to keep these examples as simple as possible, we have not incorporated the supervised release portion of the sentence. The Guidelines do not change the statutory requirements for supervised release, the amount of which depends on the maximum sentence for the offense and not on the guideline prison range or the length of the sentence imposed (unless the sentence imposed is one year or less).



### *Explanation of Scoring*

PWID Heroin (Drug Group 2) is a 1 point offense, which puts the defendant in Column B.

### *Sentence*

The defendant's current offense and criminal history put him in box 8B, in which probation, a short split sentence or a prison sentence are permissible. The judge may impose a prison sentence anywhere in the range of 10 to 28 months for box 8B, suspend imposition of all of it (and the accompanying 3 years of supervised release) and place the defendant on probation for any period up to 5 years, the maximum allowed by statute. The judge may also sentence the defendant to a prison sentence between 10 and 28 months, suspend execution of all but six months or less to be followed by a period of probation up to 5 years. Or the judge can sentence the defendant to a prison sentence between 10 and 28 months. All of these options would be compliant.

A prison sentence of less than 10 months or greater than 28 months or a split other than a short split or a long split would not be a compliant sentence unless there is (a) a statutory enhancement or (b) a departure principle. Without an enhancement or a departure principle, a prison-only sentence of less than ten months or more than 28 months is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

### **9.3 Example 3 – Short Split Sentence Permissible**

Defendant was found guilty of Possession with Intent to Distribute (marijuana) while armed (Drug Grid Group 1), for an offense committed on 2/9/2004.

### *Prior convictions*

PWID Marijuana (misdemeanor)(DC):	6/7/2002	yes	¼ point
PWID Cocaine (DC):	4/5/2003	yes	<u>1 point</u>
			1¼ points

### *Explanation of scoring*

This offender's criminal history score is 1¼. The PWID marijuana conviction is a misdemeanor and is worth ¼ points. The PWID Cocaine conviction (Drug Group 2) is 1 point. The defendant is thus in column B.

### *Sentence*

The defendant's current offense and criminal history put him in Drug Grid Box 1B, which is a short split permissible box. The judge may impose a short split sentence. For a short split sentence to be compliant, the judge must impose an incarceration sentence that is within the prison range (36 – 78 months for Drug Box 1B) and suspend execution of all but six months or less. If, however, the judge decides to impose a straight incarceration sentence, the guideline grid calls for a prison sentence of 36 to 78 months. Thus, any sentence to incarceration between 36 and 78 months (including a long split) would be a compliant sentence, as would a short split sentence.

A prison-only sentence greater than 78 months would not be compliant unless there is (a) a statutory enhancement or (b) a departure principle. Similarly, a prison-only sentence of less than 36 months or a probation sentence would not be compliant unless there is a departure principle. Without a departure principle, probation only or a prison-only sentence of less than 36 months or more than

78 months or a split other than a short split or a long split is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

#### 9.4 Example 4 – Criminal History Issues: Adult Lapse and Misdemeanor Caps

Defendant pled guilty to Assault with a Dangerous Weapon (Master Grid Group 6), for an offense committed on 2/9/2004.

##### *Prior Convictions*

UUV (DC):	8/17/1980, sentence ended 10/20/1984	No
CPWL (DC):	5/3/1990, sentence ended 1/26/1992	No
Possession of heroin (DC):	7/6/1992	No
Possession marijuana (DC):	6/16/1999	Yes <sup>1</sup> / <sub>4</sub> point
Simple Assault (DC):	4/29/2000	Yes <sup>1</sup> / <sub>4</sub> point
2nd Degree Theft (DC):	6/7/2001	Yes <sup>1</sup> / <sub>4</sub> point
2nd Degree Theft (DC):	1/12/2001	Yes <sup>1</sup> / <sub>4</sub> point
Shoplifting (DC):	8/10/2002	Yes <sup>1</sup> / <sub>4</sub> point
Possession of marijuana (DC):	12/17/2002	Yes <sup>1</sup> / <sub>4</sub> point
Unlawful Ammunition (DC):	3/8/2003	Yes <sup>1</sup> / <sub>4</sub> point
		1 <sup>3</sup> / <sub>4</sub> points
	but cap of	1 <sup>1</sup> / <sub>2</sub> points

##### *Explanation of Scoring*

Because the two felony convictions and the possession of heroin conviction are beyond the 10-year window, they have lapsed. They cannot be revived by misdemeanor convictions and therefore do not count towards criminal history. There are seven non-lapsed misdemeanor convictions, which count for <sup>1</sup>/<sub>4</sub> points each EXCEPT that there is a cap of 1<sup>1</sup>/<sub>2</sub> points (six misdemeanors) on misdemeanor convictions. As a result, this defendant has a criminal history score of 1<sup>1</sup>/<sub>2</sub> points, putting him in column B.

##### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6B, which is a prison-only box. The prison range is between 24 and 66 months. A compliant sentence would be a prison sentence of no less than 24 months and no greater than 66 months. The lapsed criminal convictions did not count towards criminal history but the judge may consider them when deciding where within the prison range to sentence the defendant. The lapsed convictions are not an aggravating factor that would allow a departure from the prison range, but may be considered if enhancement papers have been filed.

A prison sentence of less than 24 months probation, or a short split, or a prison sentence of more than 66 months would not be compliant unless the judge finds a departure principle. Without a departure, a sentence of less than 24 months or more than 66 months is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

#### 9.5 Example 5 – Criminal History Issues: Adult Revival and Out-of-State Convictions

Defendant was found guilty of Distribution of Heroin (Drug Grid Group 2), for an offense committed on 2/9/2004.

### *Prior Convictions*

Receiving Stolen Property (felony):	11/22/1975	Yes	½ point
Possession of Heroin:	2/5/1982	No	0 point
PWID Cocaine (DC):	8/17/1983; sentence ended 9/17/1986	Yes	½ point
Attempted Murder (PA):	4/15/1997	Yes	<u>3 points</u>
			4 points

### *Explanation of Scoring*

The Receiving Stolen Property, Possession of Heroin and PWID Cocaine conviction are beyond the 10-year window and so have lapsed. The lapsed possession of heroin conviction is a misdemeanor and can never be revived. The non-lapsed felony conviction in 1997, however, revives the lapsed felony convictions. The revived Receiving Stolen Property conviction and the revived PWID cocaine conviction are ½ points each. The attempted murder conviction in Pennsylvania most closely matches DC's assault with intent to kill; therefore, it would be a group 5 offense worth 3 criminal history points. The final criminal history score is 4 points, putting this defendant in column D.

### *Sentence*

The defendant's current offense and criminal history put him in Drug Grid Box 2D, which is a short split permissible box. Thus the judge may impose either a short split or a prison sentence (including a long split). In either case, the judge must impose a prison sentence that is within the prison range (24 – 48 months for Drug Box 2D). For a short split sentence, the court may then suspend execution of all but six months or less. Thus, any sentence to incarceration between 24 and 48 months would be a compliant sentence, as would a short split sentence.

A prison sentence of less than 24 months or more than 48 months (including a long split), or a prison sentence between 24 and 48 months ESS all and placing the defendant on probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 24 months or more than 48 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

## **9.6 Example 6 – Criminal History Issues: Juvenile Adjudications**

The defendant pled guilty to Aggravated Assault (Master Grid Group 6), offense committed on 2/9/2004.

### *Prior Adjudications*

2nd Degree Sex Abuse (juv.)(DC):	1/02/1996	No	
released from Oak Hill,	2/3/1998	No	0 points
Unregistered Firearm (juv)(DC):	5/6/1999	No	0 points
Armed Robbery (juv)(DC):	9/8/1999	Yes	
released from Oak Hill	3/4/2001	Yes	1 ½ points
PWID Cocaine (juv)(DC):	4/5/2001	Yes	½ point
Carjacking (juv)(DC):	7/8/2001	Yes	
released from Oak Hill	11/30/2003	Yes	<u>1 ½ points</u>
			3 ½ points
			but cap of 1½ except for Master 1-5
			3 points

### *Explanation of Scoring*

The 2nd degree sex abuse adjudication was over 5 years ago. This adjudication has lapsed and cannot be revived. Unregistered firearm is a misdemeanor offense and juvenile misdemeanors are not counted towards criminal history regardless of when they were committed. The armed robbery adjudication is 1½ points, PWID cocaine is ½ points and carjacking is 1½ points. Juvenile adjudication criminal history points normally cap at 1½points, except that the armed robbery and the carjacking offenses are both group 5 offenses and therefore not subject to the juvenile cap. The PWID cocaine offense is subject to the cap. Thus, the criminal history for this defendant is 3 points, 1½ each from the armed robbery and the carjacking, but, practically speaking, no points from the PWID cocaine because of the cap. Three points puts the defendant in column C.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6C, which is a prison-only box. The prison sentence is 30 to 72 months.

A prison sentence of less than 30 months or more than 72 months, a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 30 months or more than 72 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

## **9.7 Example 7 -- Mitigating Factor**

Defendant was found guilty of Armed Robbery (Master Grid Group 5), for an offense committed on 2/9/2004.

### *Prior Convictions*

Armed Robbery (DC):	9/3/2000	yes	3 points
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### *Explanation of Scoring*

This offender's criminal history score is 3 for the prior armed robbery conviction. Three points puts the defendant in column C.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 5C, which is a prison-only box. The guideline grid calls for 60 to 108 months. Thus, any prison sentence between 60 and 108 months would be a compliant sentence. However, this defendant substantially assisted law enforcement in the apprehension of other offenders who, along with the defendant, were involved in a series of home invasions. As a result, the judge can sentence below the lower number of months in the sentencing range (60 months) by stating that he or she found a substantial and compelling mitigating factor (in this case, Mitigating Factor #7, providing substantial assistance to law enforcement) to depart downward. If the judge applies a guideline mitigating factor, this downward departure is a compliant sentence. The guidelines make no recommendation as to how far downward the judge should depart, but encourage judges to take into account proportionality to other defendants and other offenses in determining how far below the minimum sentence they should go.

## 9.8 Example 8 -- Aggravating Factor

Defendant pled guilty to Aggravated Assault (Master Grid Group 6), for an offense committed on 2/9/2004, victim was a disabled person.

### *Prior Convictions*

Simple Assault (DC):	4/2/2000	Yes	¼ point
Simple Assault (DC):	9/11/2001	Yes	¼ point
PWID Cocaine (DC):	0/3/2002	Yes	<u>1 point</u>
			1 ½ points

### *Explanation of scoring*

This offender's criminal history score is 1½. The only felony conviction is PWID Cocaine, which is a 1 point offense. The remaining two offenses are misdemeanors, which count for ¼ points each. All of them are in the 10-year window. A score of 1½ puts the defendant in Criminal History column B.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6B, which is a prison-only box with a sentencing prison range of 24 to 66 months. Thus, any prison sentence between 24 and 66 months would be a compliant sentence. However, the judge found Aggravating Factor #2, that the defendant assaulted a victim who was "...particularly vulnerable due to age or reduced physical or mental capacity." As a result, the judge can sentence above the higher number of months in the sentencing range (66 months) by stating that he or she found a substantial and compelling aggravating factor to depart upward. If the judge applies a guideline aggravating factor, this upward departure is a compliant sentence. The guidelines make no recommendation as to how far upward the judge should depart but encourage judges to take into account proportionality to other defendants and other offenses in determining how far above the maximum sentence they should go.

## 9.9 Example 9 -- Enhancements

Defendant was found guilty of Distribution of Cocaine in a Drug Free Zone for an offense committed on 2/9/04.

### *Prior Convictions*

Distribution of Cocaine	8/24/89		
sentence finished	1/9/94	No	0 points

### *Explanation of Scoring*

The sentence for defendant's only prior conviction was completed more than ten years before the commission of the instant offense. Therefore, for scoring purposes, it is not counted and the defendant has zero criminal history points.

### *Sentence*

Defendant's current offense and criminal history score put him in Drug Grid box 2A, in which the court may impose a prison-only sentence (including a long split), a short split sentence, or straight probation. The prison range in Drug Grid box 2A is 12 to 30 months. In this case, there are two

factors that can raise the upper number. First, the current offense is distribution of cocaine in a drug free zone. Under D.C. Code § 48-904.07a(b), the maximum sentence for this offense is twice that for simple distribution of cocaine. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). Second, if enhancement papers were filed in this case under D.C. Code § 48-904.08, the maximum sentence for a second drug offense is twice that of the first. The 8/24/89 conviction for distribution of cocaine that was not counted for scoring purposes can nonetheless be used for enhancement purposes. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). In this case, a prison sentence of 12 to 60 months, a short split sentence, or straight probation would be compliant.

Note: The fact that there are two enhancements in this example does not mean that the upper number is raised twice. In situations where one enhancement is greater than the other, the court would have the option of applying the higher of the two.

### **9.10 Example 10 -- Concurrent sentences**

Defendant was found guilty of two offenses: Unauthorized Use of a Vehicle (Master Grid Group 8) and Possession of a Prohibited Weapon (Master Grid Group 9). Both offenses were committed on 2/9/2004.

#### *Prior Convictions*

Bail Reform Act (felony)	6/17/98	Yes	1 points
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#### *Explanation of scoring*

Defendant has one prior convictions for a 1-point offense. A score of 1 point puts the defendant in Criminal History column B.

#### *Sentence*

The defendant's current offenses and criminal history put him in Master Grid Box 9B and Box 8B. These light gray boxes indicate that probation is a permissible sentence, as is a short split or a straight prison sentence. First, the judge should make the in/out decision. If the judge decides not to impose a term of probation but to sentence the defendant to a term of incarceration, the prison range for the PPW is 3 to 16 months and for the UUV is 10 to 28 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. Because these are nonviolent crimes, multiple offenses, one transaction (a search of the car incident to the arrest for the UUV found a prohibited weapon), the guidelines rule is that these sentences should be run concurrently. Unless the judge finds that the resulting sentence would be too lenient (Aggravating Factor #10), these sentences must be imposed concurrently. It also would be a compliant sentence to give a term of probation for each offense or a short split sentence.

### **9.11 Example 11 -- Consecutive sentences**

Defendant pled guilty to two counts of Armed Robbery (Master Grid Group 5), for separate offenses that were committed on 2/9/04.

#### *Prior Convictions*

No prior convictions. This offender's criminal history score is zero, which puts the defendant in criminal history column A.

### *Sentence*

The defendant's current offenses and criminal history put him in Master Grid Box 5A, which is a prison-only box. The prison range is 36 to 84 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. The defendant was convicted of two crimes of violence, multiple victims, multiple transactions (wielding a knife, the defendant had robbed one pedestrian and then a few minutes later robbed another pedestrian.) The guideline rules call for consecutive sentences in such cases. Unless the judge finds that the resulting sentence would be too harsh (excessive) (Mitigating Factor #9), these sentences must be imposed consecutively.

### **9.12 Example 12 -- Criminal History counts for one offense, not for another**

Defendant was found guilty of one count of Armed Robbery (Master Grid Group 5), for an offense committed on 2/9/04, and one count of First-Degree Burglary while armed [BI w/a] (Master Grid Group 3) for an offense that was committed on 3/17/03. Sentencing on the same day.

#### *Prior convictions*

		<u>Armed Robbery</u> 2/9/2004		<u>Burglary I while armed</u> 3/17/2003	
Armed robbery	8/23/1974	No	0	Yes	3 points
Attempted robbery	4/07/1979	No	0	Yes	½ points
Robbery	11/23/1984	No	0	Yes	
sentence ended	7/29/1993	No	<u>0</u>	Yes	<u>2 points</u>
		0 points		5 ½ points	

#### *Explanation of scoring*

The sentences in all of the defendant's prior cases were completed beyond the 10-year window in the armed robbery case. In other words, they were completed more than ten years before he committed the armed robbery on 2/9/04. Therefore, none of them count in calculating the defendant's criminal history score for that offense. However, the sentence for the 11/23/84 robbery was not completed until 7/29/93, within the 10-year window or less than ten years prior to the commission of the 3/17/03 BI w/a. It is therefore counted fully at 2 points (Master Grid 6). The same case revives the older felony convictions, but one of them counts for half, ½ point for the attempted robbery (Master Grid 8) and the other counts fully, 3 points for the Armed Robbery (Master Group 5).

This offender's criminal history score is 5 ½ points for the BI w/a while armed, which puts the defendant in criminal history column D. The defendant's criminal history score is zero points for the armed robbery, which puts the defendant in criminal history column A.

### *Sentence*

The defendant's current offenses and criminal history put him in Master Grid Box 5A for the armed robbery and Master Grid Box 3D for the first-degree burglary while armed. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3D is between 126 and 216 months. Because these are crimes of violence that were committed on separate occasions, they must be sentenced consecutively. Thus, the minimum possible aggregate sentence would be 162 months (36+126) and the maximum possible aggregate sentence would be 300 months (84+216).

A prison sentence of less than 162 months (13½ years) or more than 300 months (25 years), a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 162 months or more than 300 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

If enhancement papers had been filed in this case, the offenses that did not count for the criminal history score in the armed robbery case could, nonetheless, count as two prior crimes of violence that would subject the defendant to a maximum sentence of life without release under D.C. Code § 22-1804a(a)(2). Under these circumstances, any aggregate sentence between 162 months and the statutory maximum would be compliant.

### **9.13 Example 13 -- Order of sentencing**

A co-defendant of the offender in Example 12 was found guilty of one count of Armed Robbery (Master Grid Group 5), for an offense committed on 2/9/04, and one count of First-Degree Burglary while armed [BI w/a] (Master Grid Group 3) for an offense that was committed on 3/17/03. Sentencing in the Armed Robbery case was the day before sentencing in the BI w/a case.

#### *Prior convictions*

AR – no prior convictions

BI w/a – the AR is a prior conviction, 3 points

#### *Explanation of scoring*

At the time the AR was sentenced, the defendant had no prior convictions. The BI w/a was still pending sentencing even though the BI w/a was committed before the AR was. Because the AR was sentenced before (on a different day) the BI w/a, it is a prior conviction for the BI w/a and counts for 3 points.

The defendant's criminal history score is zero points for the armed robbery, which puts him/her in criminal history column A. This defendant's criminal history score is 3 points for the first-degree burglary while armed, which puts him/her in criminal history column C.

#### *Sentence*

The defendant's current offenses and criminal histories put him in Master Grid Box 5A for the armed robbery and Master Grid Box 3C for the first-degree burglary while armed. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3C is between 114 and 204 months. The rule requiring consecutive sentences applies only to offenses sentenced on the same day. See § 6.1. These cases were sentenced on different days. Therefore, in sentencing the BI w/a, the court has discretion to determine whether it should run consecutively to or concurrent with the armed robbery.

### **9.14 Example 14 -- Rule 11(e)(1)(C) plea**

Defendant pled guilty to ADW (Master Grid Group 6) for an offense committed on 2/9/2004.

#### *Prior convictions (or Criminal history)*

None.



### *Explanation of scoring*

N/A.

### *Sentence*

The government and the defendant agreed to a Rule 11(e)(1)(C) plea. They agreed that if the defendant pled guilty to ADW, the sentence would be 24 months, ESS all, and 3 years probation. The parties also agreed that the defendant would spend the first six months in a halfway house *as a condition of probation*. See D.C. Code § 16-710(b-1). The defendant's case falls in box 6A (dark gray), which permits a short split sentence. However, if a short split sentence instead of a probation sentence were imposed, the initial period of incarceration of six months or less would be controlled by the Bureau of Prisons, which cannot send a person to a halfway house at the beginning of a sentence. By agreeing to six months in a halfway house as a condition of probation, the parties could ensure that the defendant would be sent to a halfway house in the District of Columbia so that he or she could maintain his or her employment. Box 6A does not permit an entirely suspended sentence with probation (absent a departure based on a mitigating factor). However, if the court accepts the Rule 11 (e)(1)(C) plea, the court may (in fact, must) impose the agreed-upon sentence of 24 months, ESS all, three years probation with the first six months in a halfway house. This is a *compliant* sentence. The judge need explain only that the sentence was imposed pursuant to a Rule 11 (e)(1)(C) plea. The judge, of course, does not have to accept an 11(e)(1)(C) plea agreement.

### **9.15 Example 15 – Long Split**

Defendant pled guilty to ADW (Master Grid Group 6) for an offense committed on 2/9/2004.

### *Prior convictions*

Possession (heroin) (DC):	3/8/1998	Yes	¼ point
Possession drug paraphernalia (DC):	6/11/2000	Yes	¼ point
Possession (cocaine) (DC):	1/10/2001	Yes	¼ point
Uttering (DC)	9/20/2002	Yes	<u>1 point</u>
			1¾ points

### *Explanation of scoring*

The possession charges are all misdemeanors and are counted ¼ points each. The Uttering (Master Group 9) is 1 point.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6B. Box 6B is a prison-only box. For any number of reasons, the judge might find that a split sentence is appropriate in the instant case, perhaps "to have more time hanging over the defendant's head" than if the judge imposed a straight prison sentence followed by supervised release. The judge could impose a "long split." In a long split, both the sentence the judge imposes and the time to be served initially must fall within the prison range in the appropriate box. The prison range for Box 6B is 24 to 66 months. Thus, the judge could impose a sentence of 60 months and 3 years of supervised release and suspend all but 24 months of the prison term and the period of supervised release and place the defendant on probation for five years. Because both prison terms fall within the range, it is a compliant sentence, even in a prison-only box.

Note: It would not be permissible for the judge to impose a sentence of 60 months and suspend execution of all but 12 months since, in a long split, both sides have to be in the box and 12 months is below the prison range in Box 6B. It would also not be permissible for the judge to impose a sentence of 72 months and suspend execution of all but 24 months since 72 months is above the prison range in Box 6B

Note: Because prison is an option in every box on both grids, a "long split" is also a compliant option in every box as well, as long as the sentence imposed and the time to be served initially (the time left unsuspended) fall within the box's prison range.

## 9.16 Example 16 -- Multiple counts; merger; mandatory minimums

Defendant was found guilty of armed robbery (operable firearm) (M5); 2 counts of APO with a dangerous weapon (M6), two counts of ADW (M6), 3 counts of PFCOV (M6), and CPWL (M8) in a case where he robbed a store clerk at gunpoint and shot at two plain clothes police officers who spotted the defendant identified themselves, and ordered him to stop.

### *Prior convictions*

Distribution (cocaine) (DC): 7/23/2001 Yes 1 point

### *Explanation of scoring*

Distribution of cocaine is a Drug Grid 2 offense which carries 1 point. This would put defendant in column B.

### *Sentence*

Both Master Grid 5B and Master Grid 6B are prison only boxes. Master Grid 8B is a prison, short split, or probation permissible box. There are three victims (store clerk and two police officers) regardless of whether this is considered to be one event or two events (armed robbery as one; shooting of police as two). Armed robbery, APO w/ dangerous weapon, ADW, and PFCOV are violent crimes. Therefore, one of these offenses for each victim must be sentenced consecutively to one offense for each of the others. Both Master Grid 5B and Master Grid 6B offenses are prison only boxes. Master Grid 8B is a prison, short split, or probation permissible box. Armed robbery (operable firearm) and PFCOV are in Box 5B which has a prison range of 48 to 96 months. However, both offenses have a mandatory minimum of 60 months. CPWL is not a crime of violence.

The Court of Appeals instructs that a sentence should be given for each offense even though ultimately some of the above offenses will likely merge: ADW into APO w/ dangerous weapon and the two counts of PFCOV for the shooting of the police officers. The possible sentencing options are as follows:

Armed robbery (operable pistol)	60 -- 96 months	MM
APO w/ dangerous weapon (officer 1)	24 -- 66 months	
ADW (officer 1)	24 -- 66 months	
APO w/ dangerous weapon (officer 2)	24 -- 66 months	
ADW (officer 2)	24 -- 66 months	
3 counts PFCOV (one for each of the above)	60 -- 96 months	MM
CPWL	6 -- 24 months	(or probation or short split)

Applying the consecutive/concurrent rules, the lowest possible aggregate sentence that could be given in this case is:

(1)(a)	Victim 1: Armed robbery (operable pistol)	60 months
(1)(b)	Victim 2: APO w/dangerous weapon for first officer concurrent with ADW (which will merge)	24 months
(1)(c)	Victim 3: APO w/ dangerous weapon for second officer concurrent with ADW (which will merge)	24 months
(2)	(1)(a), (b), and (c) consecutive to each other	<u>108 months</u>
(3)	PFCOV for APO w/ dangerous weapon of second officer (60 months) concurrent with PFCOV for APO w/ dangerous weapon of first officer (60 months) which will merge, concurrent with PFCOV for AR (60 months), which will not merge if different events, and concurrent with (2)	--
(4)	CPWL (6 months) concurrent with (2)	--

Applying the consecutive/concurrent rules, the highest possible aggregate sentence that could be given in this case is:

(1)	Armed robbery	96 months
(2)	APO w/ dangerous weapon merges w/ADW	66 months
(3)	APO w/ dangerous weapon merges with ADW	66 months
(4)	PFCOV for armed robbery	96 months
(5)	PFCOV for APO w/ dangerous weapon of second officer (96 months) concurrent with PFCOV for APO w/ dangerous weapon of first officer ((96 months) which will merge	96 months
(6)	CPWL	<u>28 months</u>
(7)	(1) through (6) consecutive to each other	448 months

**INDEX**  
(reserved for future use)

## Appendix A - MASTER GRID

June 14, 2004

		Criminal History Score				
	Ranking Group Most Common Offenses	0 to ½ <b>A</b>	¾ to 1¼ <b>B</b>	2 to 3¾ <b>C</b>	4 to 5¾ <b>D</b>	6 + <b>E</b>
3 Points*	<b>Group 1</b> 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	<b>Group 2</b> 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	<b>Group 3</b> Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	<b>Group 4</b> Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	<b>Group 5</b> Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
	<b>Group 6</b> ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
2 Points*	<b>Group 7</b> Burglary II 3rd degree sex abuse Negligent homicide Assault w/I to commit mayhem Attempt 2nd degree sex abuse	12 - 36	18 - 42	24 - 48	30 - 54	36 +
	<b>Group 8</b> CPWOL UUV Attempt robbery Attempt burglary 1st degree theft	6 - 24	10 - 28	14 - 32	18 - 36	22 +
1 Point *	<b>Group 9</b> Escape/prison breach BRA Receiving stolen property Uttering Forgery RSP	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded boxes – prison or short split permissible.						
Light shaded boxes – prisons, short split, or probation permissible.						

## Appendix B -- DRUG GRID

June 14, 2004

		Criminal History Score				
	<b>Ranking Group</b> Most common offenses	0 to ½ <b>A</b>	¾ to 1¾ <b>B</b>	2 to 3¾ <b>C</b>	4 to 5¾ <b>D</b>	6 + <b>E</b>
<b>2 Points*</b>	<b>Group 1</b> Distribution w/a PWID w/a	30-72	36-78	41-84	48-90	54+
<b>1 Point*</b>	<b>Group 2</b> Distribution PWID	12-30	16-36	20-42	24-48	28+
	<b>Group 3</b> Attempt Distribution Attempt PWID	6-18	10-24	14-30	18-36	22+
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded boxes – prison or short split permissible.						
Light shaded boxes–prisons, short split, or probation permissible.						

## **Appendix C -- SENTENCING CHART FOR FELONIES**

(NOTE: APPENDIX C MUST BE OPENED AND/OR PRINTED SEPARATELY)

## Appendix D - RANKING CHART

(Most Common offenses by Groups)

June 14, 2004

1	Murder 1 <sup>o</sup> w/a Murder 1	Murder of a law enforcement officer 1 <sup>o</sup>
2	Murder 2 <sup>o</sup> w/a Murder 2 <sup>o</sup>	Child sexual abuse 1 <sup>o</sup> w/a Sexual abuse 1 <sup>o</sup> w/a Sexual abuse 1 <sup>o</sup>
3	AWIK w/a Burglary 1 <sup>o</sup> w/a Carjacking w/a	Child sexual abuse 1 <sup>o</sup> Kidnapping w/a Voluntary manslaughter w/a
4	Aggravated assault w/a	Voluntary manslaughter
5	Armed robbery AWI commit any offense w/a AWI commit robbery w/a AWIK Burglary 1 <sup>o</sup> Carjacking Involuntary Manslaughter w/a Involuntary Manslaughter Kidnapping Malicious disfigurement w/a Mayhem w/a Obstruction of justice PFCOV	Child sexual abuse 2 <sup>o</sup> w/a Sexual abuse 2 <sup>o</sup> w/a Sexual abuse 2 <sup>o</sup> AWI commit 1 <sup>o</sup> child sexual abuse w/a AWI commit 2 <sup>o</sup> child sexual abuse w/a AWI commit 1 <sup>o</sup> sexual abuse w/a AWI commit 2 <sup>o</sup> sexual abuse w/a Child sexual abuse, attempt 1 <sup>o</sup> w/a Child sexual abuse, attempt 2 <sup>o</sup> w/a Sexual abuse, attempt 1 <sup>o</sup> w/a Sexual abuse, attempt 2 <sup>o</sup> w/a
6	Aggravated assault Arson APO w/ dangerous weapon ADW AWI commit robbery Attempt robbery w/a Burglary 2 <sup>o</sup> w/a Cruelty to children 1 <sup>o</sup> Malicious disfigurement	Mayhem Robbery AWI commit 1 <sup>o</sup> child sexual abuse AWI commit 2 <sup>o</sup> child sexual abuse AWI commit 1 <sup>o</sup> sexual abuse AWI commit 2 <sup>o</sup> sexual abuse Child sexual abuse, attempt 1 <sup>o</sup> Child sexual abuse 2 <sup>o</sup> Sexual abuse, attempt 1 <sup>o</sup>
7	AWI commit mayhem Burglary 2 <sup>o</sup> Incest Negligent homicide	Sexual abuse, attempt 2 <sup>o</sup> Sexual abuse of a patient 1 <sup>o</sup> Sexual abuse of a ward 1 <sup>o</sup> Sexual abuse 3 <sup>o</sup>
8	APO AWI commit any offense Aggravated assault, attempt Bribery Burglary, attempt CPWL/CDW Cruelty to children 2 <sup>o</sup> DP (f) Extortion Introducing contraband into penal institution Kidnapping, attempt Perjury Procuring Robbery, attempt	Theft 1 <sup>o</sup> Threats Trafficking in stolen property UUV  Child sexual abuse, attempt 2 <sup>o</sup> Enticing a child Sexual abuse of a patient, attempt 1 <sup>o</sup> Sexual abuse of a ward, attempt 1 <sup>o</sup> Sexual abuse, attempt 3 <sup>o</sup> Sexual abuse 4 <sup>o</sup> Sexual abuse of a patient 2 <sup>o</sup> Sexual abuse of a ward 2 <sup>o</sup>
9	Bad check Bail reform act (BRA) Blackmail Crack house, maintaining Credit card fraud Embezzlement Escape Escape, attempt False personation of a police officer Forgery Fraud 1 <sup>o</sup> Fraud 2 <sup>o</sup>	Impersonating a public official Obtaining narcotics by fraud Pandering PPW -- second + offense RSP UE (vending machine) Uttering  Enticing a child. attempt Sexual abuse, attempt 4 <sup>o</sup> Sexual abuse of a patient, attempt 2 <sup>o</sup> Sexual abuse of a ward, attempt 2 <sup>o</sup>



# Appendix E - HISTORICAL DATA FOR MASTER GRID

1/1/1996-6/30/2003

	Criminal History Score				
Ranking group Most common offenses	A	B	C	D	E
<b>Group 1</b> 1st degree murder w/armed 1st degree murder	0.00% 0.00% 360mo. 360-360mo. N=172	0.00% 2.60% 360mo. 360-360mo. N=38	0.00% 0.00% 360mo. 360-360mo. N=24	0.00% 0.00% 360mo. 360-360mo. N=5	0.00% 0.00%   N=0
<b>Group 2</b> 2nd degree murder w/ armed 2nd degree murder 1st degree sex abuse w/ armed 1st degree sex abuse	0.00% 1.10% 180mo. 144-240mo. N=178	0.00% 0.00% 180mo. 180-240mo. N=31	0.00% 0.00% 180mo. 180-234mo. N=17	0.00% 0.00% 210mo. 117-240mo. N=4	0.00% 0.00% 150mo. 120-180mo. N=2
<b>Group 3</b> Voluntary manslaughter w/ armed 1st degree child sex abuse Carjacking while armed	2.10% 3.40% 120mo. 84-180mo. N=146	0.00% 0.00% 108mo. 72-180mo. N=19	0.00% 7.10% 180mo. 162-180mo. N=14	0.00% 0.00% 180mo. 72-240mo. N=3	0.00% 0.00% 120mo. 120-120mo. N=1
<b>Group 4</b> Aggravated assault w/ armed Voluntary manslaughter	8.00% 4.80% 84mo. 51-120mo. N=125	2.40% 0.00% 60mo. 36-108mo. N=42	0.00% 5.90% 102mo. 52-120mo. N=17	0.00% 0.00% 60mo. 60-60mo. N=1	0.00% 0.00% 20mo. 20-20mo. N=1
<b>Group 5</b> Possession of firearm /CV Armed robbery Burglary I	3.10% 5.00% 60mo. 60-60mo. N=519	5.20% 1.70% 60mo. 60-60mo. N=172	1.20% 0.00% 60mo. 60-72mo. N=85	4.50% 0.00% 60mo. 60-60mo. N=22	0.00% 0.00% 60mo. 48-72mo. N=9
<b>Group 6</b> ADW Robbery Aggravated assault 2nd degree child sex abuse	23.00% 9.10% 30mo. 18-40mo. N=900	14.10% 7.20% 30mo. 20-40mo. N=249	10.50% 3.90% 36mo. 24-40mo. N=153	7.70% 5.10% 33mo. 20-36mo. N=39	0.00% 0.00% 36mo. 21-48mo. N=5
<b>Group 7</b> Burglary II 3rd degree sex abuse Negligent homicide	31.00% 5.40% 20mo. 12-27mo. N=129	25.30% 5.10% 24mo. 13-36mo. N=99	16.70% 2.40% 24mo. 21-36mo. N=84	20.80% 4.20% 33mo. 24-51mo. N=24	0.00% 16.70% 24mo. 9-48mo. N=6
<b>Group 8</b> CPWOL UUV Attempt robbery	44.50% 12.50% 12mo. 8-20mo. N=1847	25.90% 9.10% 12mo. 9-18mo. N=584	21.80% 8.80% 12mo. 10-20mo. N=308	22.90% 7.10% 12mo. 10-20mo. N=70	18.20% 9.10% 12mo. 8-13mo. N=22
<b>Group 9</b> Escape/prison breach BRA Receiving stolen property	37.90% 6.90% 4mo. 3-9mo. N=1720	29.90% 4.90% 4mo. 3-9mo. N=1184	24.80% 5.20% 4mo. 3-9mo. N=650	20.40% 6.50% 4mo. 4-11mo. N=93	29.00% 3.20% 6mo. 3-12mo. N=31
Note: Shaded cells have fewer than 10 cases. Altogether, N equals 10,242 cases. See table content key on next page.					

## Appendix F - HISTORICAL DATA FOR DRUG GRID

1/1/1996-6/30/2003

	Criminal History Score				
Ranking group Most common offenses	A	B	C	D	E
<b>Group 1</b> Distribution w/a PWID w/a	50.00% 10.00% 60mo. 33-87mo. N=10		0.00% 33.30% 48mo. 36-60mo. N=3	N=0	N=0
<b>Group 2</b> Distribution PWID	52.00% 8.80% 15mo. 10-24mo. N=1713	39.10% 6.50% 18mo. 12-36mo. N=713	24.70% 8.40% 24mo. 12-36mo. N=275	24.20% 6.10% 24mo. 16-30mo. N=33	0.00% 0.00% 20mo. 4-36mo. N=3
<b>Group 3</b> Attempt Distribution Attempt PWID Obtain Narcotics by Fraud	62.20% 8.70% 12mo. 8-18mo. N=1791	48.10% 4.80% 14mo. 12-24mo. N=728	34.40% 5.30% 15mo. 12-24mo. N=262	41.40% 3.40% 12mo. 12-24mo. N=29	20.00% 0.00% 30mo. 9-48mo. N=5
Note: Shaded cells have fewer than 10 cases. Altogether, N equals 5565 cases.					
Table Content 1. Percent probation 2. Percent Split < 181 days 3. Median minimum sentence (old and new law) 4. 25th-75th percentile (middle 50% of Sentence) 5. Number of cases					

## Appendix G -- INSTRUCTIONS ON SPLITS

### Problems regarding the implementation of determinate sentences in the District of Columbia June 15, 2002

Dear Judges, Assistant United States Attorneys and members of the Defense Bar:

It has come to our attention that there is still some confusion with respect to the “new” determinate sentencing system. We write this memo to help clarify a few aspects of the system that seem to be the most confounding.

#### Calculating maximum prison time for non-Class A felonies

In the new determinate sentencing system [“new system”], there are two classes of felonies: Class A felonies and everything else. With the exception of armed carjacking, all of the Class A felonies carried a maximum penalty of life in the old indeterminate sentencing system [“old system”].<sup>17</sup> All other felonies carried a maximum penalty of a term of years in the old system.

The distinction between Class A felonies and all other felonies determines, among other things, the maximum sentence the court can impose. For Class A felonies, the court can impose any sentence up to the statutory maximum sentence. For all other felonies, the court must deduct from the statutory maximum sentence the additional prison time that could be imposed (by the U.S. Parole Commission) if supervised release were to be revoked [“back up time”]. Keep in mind that back up time is not the same as the term of supervised release.

The total amount of time a person could serve in prison following revocation of supervised release is set out in column two of the following chart:

<b>If the statutory maximum for the offense is</b>	<b>Then the maximum amount of imprisonment following revocation of supervised release [“back up time”] is</b>
Life or the offense is specifically designated as a “Class A” felony	5 years
25 years or more, but less than life	3 years
5 years or more, but less than 25 years	2 years
Less than 5 years	1 year

In order to figure out the maximum prison sentence the court can impose, one should first determine what the statutory maximum for the offense is and then, for non-Class A felonies, deduct the amount of back up time from the statutory maximum. The balance is the maximum prison sentence the court can impose.

Thus, for example, aggravated assault has a statutory maximum penalty of 10 years. The back up time for aggravated assault is 2 years because the statutory maximum is more than 5 years but less than 25 years. Therefore, the maximum amount of prison time that the court can impose on the defendant on the day of sentencing is 8 years (the 10-year statutory maximum minus 2 years

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<sup>17</sup>Class A felonies are: first and second degree murder, first degree sexual abuse, first degree child sexual abuse, kidnapping, armed carjacking, obstruction of justice, armed crimes of violence as defined in D.C. Code § 22-4501(f)(2001), the third conviction for a felony, and the third conviction for a violent felony.

of back up time). The worst case scenario for this defendant (from his or her point of view) is that the court imposes the maximum prison sentence of 8 years and then the defendant violates his/her subsequent supervised release and gets revoked by the United States Parole Commission for the entire 2 years. Even in this worst case scenario, the defendant cannot be legally imprisoned even one day more than the 10 year statutory maximum, which was the intent behind requiring the subtraction of the back up time.

Remember that subtracting the back up time from the statutory maximum to arrive at the maximum prison sentence that can be imposed is required for all felonies except Class A felonies.

Subtracting the back up time from the statutory maximum is the only way to arrive at the correct maximum prison sentence and the calculation is mandatory. A sentence greater than the statutory maximum minus the back up times is not a legal sentence. Thus, for example, assault on a police officer has a 5-year statutory maximum. The maximum prison sentence is therefore 3 years (the 5 year statutory maximum minus the 2 year back up time). The court cannot legally impose a prison sentence of 4 years or 5 years, even if the court suspends the sentence and places the defendant on probation.

For Class A felonies, the back up time is not subtracted from the statutory maximum. For example, aggravated assault while armed is a Class A felony and its statutory maximum penalty is now 30 years. While the back up term is 5 years, this term is not subtracted from the statutory maximum to arrive at the maximum prison sentence the court can impose. The maximum prison sentence the court can impose is the statutory maximum; thus, the judge can impose a sentence of up to 30 years.

The court may not impose a prison term greater than the statutory maximum for Class A felonies or the statutory maximum *minus* back-up time for all other felonies. The court is always free to impose less prison time, keeping in mind any applicable mandatory minimums. Once the court imposes its sentence, the defendant will serve at least 85% of it according to “truth-in-sentencing” principles. The defendant can earn good time to reduce his or her sentence, but s/he cannot reduce the sentence by more than 15%. As in the old system, the United States Bureau of Prisons, and not the court, administers the award of good time credits.

Finally, the amount of back up time for any given offense is set by D.C. Official Code § 24.403.1(b)(7). It is not a part of the sentence imposed by the judge. If the U.S. Parole Commission revokes supervised release, it can impose all or part of the back up time. If the Parole Commission imposes only part of the back up time, the balance is still available if the Parole Commission places the defendant on supervised release again in that case and it is again revoked.

### Split sentences

Split sentences continue to pose problems in the new regime. A split sentence must have these elements: an imposed prison sentence, an imposed period of supervised release, suspension of some, but not all, of the prison time, suspension of all of the supervised release term and a period of probation, not to exceed 5 years, to follow release from the unsuspended portion of the prison time.

To impose a legal split sentence, the court should impose the prison sentence it wants the defendant to serve if probation is later revoked and impose the amount of supervised release that it must impose with that prison sentence. Then the court should suspend the amount of prison time it wants to suspend and suspend all the supervised release time. The court should then set an appropriate term of probation. The court must impose a term of supervised release because the law says that every felony sentence must be followed by an adequate period of supervised release. The court must suspend the imposed term of supervised release when it is imposing a split sentence because the felony sentence will not be completely served and the supervised release will not begin unless and until probation is revoked and the defendant serves the unsuspended portion of the original prison sentence (or some lesser sentence, if the judge chooses to reduce it upon

revocation).<sup>18</sup> If the supervised release were not suspended, it would run concurrently with the probation and the court and the United States Parole Commission would both have jurisdiction in the same case at the same time. If the defendant violated, for example by testing positive for drugs, then anomalous results could occur with the judge deciding not to revoke probation but to order the defendant into an inpatient treatment program and the United States Parole Commission deciding to revoke supervised release and to send the defendant to prison.

An example of a legal split sentence in an aggravated assault case is “6 years in prison to be followed by 3 years supervised release, suspend all but 2 years in prison to be followed by 4 years probation.” In this example, the defendant will serve 2 years in prison and then be released to do 4 years of probation. If the defendant is successful on probation, then the defendant will never serve the remainder of the prison sentence (the 4 years s/he did not serve of the 6 year imposed sentence) and s/he will never serve the term of supervised release. If the defendant is unsuccessful and the court revokes probation, then the defendant will serve the remainder of the prison sentence (or less, if the court chooses) and, once s/he is released from prison, the defendant will serve the 3-year term of supervised release.

When calculating a split sentence, the initial prison sentence that the court imposes cannot be greater than the maximum prison sentence allowed for the offense. Splitting a sentence does not change the rules for how the maximum prison sentence must be calculated for non-Class A felonies. In the earlier example, we noted that a sentence of 4 years on a conviction of APO is illegal. It is similarly illegal to impose a sentence of 4 years, followed by a 3-year term of supervised release, suspend all but 1 year, followed by probation for 2 years. In this example, the defendant would initially serve only one year, but if the probation were later revoked, s/he could serve the remainder of the 4-year prison term imposed and then be subject to 2 years of back up time if s/he violates the conditions of his/her 3-year term of supervised release. This means that defendant could be required to serve 6 years in prison -- which is more than the 5-year statutory maximum. As discussed above, a defendant cannot be made to serve more time in prison than the statutory maximum penalty for that offense.

#### Minimum sentences (robbery)

Robbery is probably the most common offense for which there is a statutory minimum but there are others, including first and second degree burglary (5 years and 2 years, respectively) and second degree murder (20 years). See attached chart. Using robbery as an example, according to D.C. Official Code § 22-2801, the penalty for robbery is “not less than 2 years nor more than 15-years.” This language does not create a mandatory minimum, and probation is a possibility on a robbery conviction. However, if the court imposes a prison sentence, then the court must impose a sentence between 2 years (the statutory minimum) and 13 years (15 year statutory maximum minus 2 years back up time). If the judge wants to impose a prison sentence but does not want the defendant to serve 2 years, there are at least two options. The court could impose a split sentence: impose a sentence of 2 years to be followed by a 3-year term supervised release, suspend all but the amount of prison time the court wants the defendant to serve and impose a period of probation. If the court wants the defendant to serve 1 year or less, then the court can either suspend imposition of sentence (ISS) or impose a sentence and suspend execution of all of it (ESS), place the defendant on probation for any period up to 5 years, and require the defendant, as a condition of probation, to spend up to one year in custody, either at the D.C. Jail or at a halfway house. D.C. Code § 16-710(b-1)(2001, 2002 interim update service). These options are available for any offense that has a minimum that is not a mandatory minimum.

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<sup>18</sup>Some believe that the court can, when splitting a sentence, suspend imposition of supervised release and impose the term of supervised release if and when probation is revoked. The majority view is that the term of supervised release must be imposed when the initial sentence is imposed, but that it must be suspended when all or part of the prison sentence is suspended and the defendant is placed on probation

## Special Problems of Multiplication and Division

The statutory maximums for some felonies are tied to statutory maximums for other felonies, which can create some complications. The period of supervised release, the back up time, and the prison sentence that can be imposed are tied to the statutory maximum sentence for the offense of conviction and not to a percentage of time for the underlying offense. For example, a person convicted of accessory after the fact faces a maximum sentence up to one-half the maximum imprisonment to which the principal is subject. If the underlying offense is aggravated assault, the defendant would face a 5-year statutory maximum because 5 years is half of the 10-year statutory maximum for aggravated assault. However, even though the maximum prison time the court can impose for aggravated assault is 8 years (10 year statutory maximum minus 2 year back up time), the most prison time the court can impose on the defendant convicted of accessory after the fact (aggravated assault) is not 4 years, but 3 years (5 year statutory maximum minus 2 years of back up time). The period of supervised release is not 1 ½ years but 3 years (since the sentence for accessory after the fact, like the sentence for aggravated assault, is less than 25 years).

Offenses that enhance a sentence based on a percentage of another offense are calculated similarly. For example, a person convicted of a crime in a case in which repeat papers have been filed pursuant to § 22-1804 faces a maximum sentence of 1 ½ times the underlying offense penalty for a second conviction and 3 times the underlying offense penalty for a third or subsequent conviction. A defendant convicted a second time for aggravated assault with repeat papers is facing a 15-year statutory maximum (10-year statutory maximum times 1 ½) and, for a third or subsequent conviction, the defendant is facing a 30-year statutory maximum (10 years times 3). Again, even though the maximum prison time the court can impose for aggravated assault is 8 years, the most prison time the court can impose for a third conviction of aggravated assault with repeat papers is not 24 years, but 27 years (30 year statutory maximum minus 3 year back up time). Since the maximum prison sentence is greater than 25 years, the period of supervised release is not 4 ½ years, but 5 years.

We trust that this review of rules and principles will be helpful to everyone as we all struggle through implementation of the new system.

## Appendix H -- STATUTORY ENHANCEMENTS

### Enhancements that generally appear in the name of the offense:

#### Status of victim

(1)	Bias Related Crime	1 ½ x the upper number	D.C. Code § 22-3703
(2)	Citizen Patrol Victim	1 ½ x the upper number	D.C. Code § 22-3602
(3)	Senior Citizen Victim	1 ½ x the upper number	D.C. Code § 22-3601
(4)	Taxicab Drivers	1 ½ x the upper number	D.C. Code § 22-3751

Note: These enhancements are limited to enumerated crimes which are not consistent from section to section.

#### Drugs and guns

(1)	Drug-free zones	2 x the upper number	D.C. Code § 48-904.07a(b)
(2)	Drugs to minors	2 x the upper number	D.C. Code § 48-904.06
(3)	Gun-free zones	2 x the upper number	D.C. Code § 22-4502.01

Enhancements that generally do not appear in the name of offense. Government must file notice of intent to seek additional penalties.

#### Crimes of violence (aggravating circumstances)

(1)	Murder I	Up to life w/o release	D.C. Code § 22-2104, 104.01; or D.C. Code § 24-403.01(b-2)
(2)	Murder II	Up to life w/o release	D.C. Code § 24-403.01(b-2)
(3)	1° sex offenses	Up to life w/o release	D.C. Code § 22-3020 or D.C. Code § 24-403.01(b-2)
(4)	Other sex offenses	1 ½ x the upper number	D.C. Code § 22-3020
(5)	Armed carjacking	up to 40 years	D.C. Code § 24.403.01(b-2)

#### Repeat papers

(1)	2 or more drug offenses	2 x the upper number	D.C. Code § 48-904.08
(2)	1 prior like felony	1 ½ x the upper number	D.C. Code § 22-1804(a)
(3)	2 or more prior like felonies	3 x the upper number	D.C. Code § 22-1804(a)
(4)	2 or more prior felonies	up to 30 years	D.C. Code § 1804a(a)(1)
(5)	2 or more prior violent felonies	up to life w/o release	D.C. Code § 1804a(a)(2)

## Appendix I -- STATUTORY MINIMUMS

Offense	Group Column <sup>19</sup>		Statutory minimum not less than <sup>20</sup>	Group range
Arson	M6	A	12 months	18-60 months
APO w/a -- 2d offense or after conviction for felony	M6	C	12 months	30-72 months
APO -- 2d offense or after conviction for felony	M8	B	12 months	10-28 months
AWI kill, rob, poison or commit 1°, 2° or child sexual abuse after conviction for COV	M5	C	24 months	60-108 months
	M6	C	24 months	30-72 months
Bad checks of \$100+	M9	A	12 months	1-12 months
Bigamy	M8	A	24 months	6-24 months
BRA (Bail Reform Act)	M9	A	12 months	1-12 months
1° Burglary	M5	A	60 months	36-84 months
2° Burglary	M7	A	24 months	12-36 months
Child prostitution: abducting/harboring	M5	A	24 months	36-84 months
	M8	A	24 months	6-24 months
1° Child sexual abuse -- after conviction for COV	M3	C	84 months	114-204 months
AWI Commit 1° or 2° Child sexual abuse -- after conviction for COV	M6	C	24 months	30-72 months
<i>Enticing a child -- after conviction for COV</i>	M8	C	84 months	14-32 months
Corrupt influence	M9	A	6 months	1-12 months
Corrupt influence - athletics	M9	A	6 months	1-12 months
DP - explosives	M8	A	24 months	6-24 months

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<sup>19</sup> Some offenses have a statutory maximum only if there is a prior conviction. They have been placed in the column that represents the least number of criminal history points for that offense.

<sup>20</sup> The statutes give the minimum in years. We have converted them into months for ease of comparison.



<b>Offense</b>	<b>Group Column</b>		<b>Statutory minimum of not less than</b>	<b>Group range</b>
Drugs, maintaining place for	D2	A	60 months	12-30 months
False personation	M9	A	12 months	1-12 months
Grave robbing	M9	A	12 months	1-12 months
Impersonating a public official	M9	A	12 months	1-12 months
Molotov Cocktail	M9	A	12 months	1-12 months
Obscenity - 2nd offense	M9	B	6 months	3-16 months
Obstruction of Justice	M5	A	36 months	36-84 months
Possession of Implements of Crime - 2nd offense or after conviction for felony	M9	B	12 months	3-16 months
Prostitution offenses -- inducing, compelling, arranging, detaining, etc.	M9	A	12 months	1-12 months
Release, offense committed while on	M9	A	12 months	1-12 months
2° sexual abuse -- 2d offense	M5	C	84 months	60-108 months
Use of smoke screens	M9	A	12 months	1-12 months
Unlawful possession of a pistol -- 2nd offense	M8	B	12 months	10-28 months
Malicious water pollution	M9	A	12 months	1-12 months